

condition of any such prior agreement and none of them has received any notice which alleges any such violation and/or threatens action based upon the same.

**7.8 Regulatory Compliance.** To the knowledge of Buyer, Buyer, Guarantor and/or their Affiliates are in compliance in all material respects with all applicable Law, except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect, and to the knowledge of Buyer, Buyer, Guarantor and/or their Affiliates have timely filed all reports, data and other information required to be filed with any Governmental Entity except where a failure to file timely would not reasonably be expected to have a Material Adverse Effect.

**7.9 Litigation or Proceedings.** Except to the extent that the following would not reasonably be expected to have a Material Adverse Effect, there are no claims, actions, suits, proceedings or investigations pending, or to the knowledge of Buyer, threatened against or affecting Buyer, Guarantor or any of their Affiliates with respect to their operations or assets, at law or in equity, or before or by any federal, state, municipal or other Governmental Entity wherever located.

**7.10 No Guaranties, Insider Loans, etc.** Except to the extent disclosed by Guarantor in filings with the Securities and Exchange Commission, (i) Buyer, Guarantor and their Affiliates do not have outstanding any material guaranty of the payment or performance of any obligation of any Person, nor has any of them entered into any material agreement to loan money to or otherwise provide financing for the business or operations of any Person, (ii) no material assets of Buyer, Guarantor and their Affiliates is pledged as collateral for the obligations of any Person, and there is no material lien, encumbrance, security interest or other charge against such assets other than those which secure obligations of Buyer, Guarantor and their Affiliates which appear on their respective financial statements, and (iii) except as would not be prohibited by the Sarbanes-Oxley Act of 2002, no executive officer, director or holder of greater than 2% of the issued and outstanding stock of Buyer, Guarantor or any of their Affiliates ("Insider") is indebted to any of Buyer, Guarantor or any of their Affiliates and there is no current agreement of Buyer, Guarantor or any of their Affiliates to loan money to or otherwise create any indebtedness of any Insider to any of them.

## **8. COVENANTS OF SELLER AND BUYER.**

**8.1 Information.** Between the date of this Agreement and the Closing Date, Seller shall afford to the officers and authorized representatives and agents of Buyer reasonable access to and the right to inspect the plants, properties, books and records of Seller and the System Entities relating to the Purchased Assets, and will furnish Buyer with such additional financial and operating data and other information as to the business and properties of Seller and the System Entities relating to the Purchased Assets as Buyer may from time to time reasonably request. Such access may include, as reasonably requested by Buyer, consultations with the personnel and medical staff of Seller and the System Entities. In addition, Seller will, and will cause its Affiliates and its and their officers, employees and agents to, provide reasonable assistance in planning, facilitating and implementing the transition from Seller's ownership and operation of the System to ownership and operation by Buyer and/or its permitted assignees. At Buyer's request, Seller shall cooperate with Buyer in Buyer's efforts to contact and obtain information



from third parties to Assumed Contracts. Buyer's right of access and inspection shall be made in such a manner as not to interfere unreasonably with the operation of the Facilities or the Purchased Assets. In this regard, Buyer agrees that such inspection shall not take place, and no employees or other personnel at any Facility shall be contacted by Buyer or Buyer's representatives, without first coordinating such contact or inspection with Joseph L. Hiersteiner or his designee.

**8.2 Operations.** From the date hereof until the Closing Date, Seller and the System Entities will, with respect to the Facilities and the Purchased Assets use their commercially reasonable efforts to:

(a) carry on the business of the Facilities and Purchased Assets in substantially the same manner as Seller and System Entities have heretofore and not make any material change in personnel, operations, finance, accounting policies, or the Purchased Assets other than in the ordinary course of business;

(b) maintain the Purchased Assets and all parts thereof in as good working order and condition as of the date hereof, ordinary wear and tear excepted;

(c) perform in all material respects all of their obligations under agreements relating to or affecting the Purchased Assets, the Facilities or the Facilities' operations, including under the Assumed Contracts;

(d) preserve Seller's and the System Entities' rights under the Assumed Contracts;

(e) keep in full force and effect current insurance coverages, including self insurance coverage, on the Purchased Assets, subject to such adjustments as Seller may in consultation with Buyer and independent insurance consultants determine to be reasonable;

(f) maintain and preserve the System's business organization intact, maintain a work force sufficient to meet the operating needs of the System and maintain the System's relationships with physicians, suppliers, patients, customers and others having business relations with the System;

(g) permit and allow reasonable access by Buyer to make offers of post-Closing employment to any personnel of the System, which personnel shall be allowed to accept such offers without penalty, competing offer or interference, and to establish relationships with physicians and others having business relations with the System. Seller shall coordinate with Joseph L. Hiersteiner or his designee all contacts with System personnel, physicians and those having business relations with the System.

(h) render title to the Purchased Assets free and clear of all Encumbrances (except for the Permitted Encumbrances);



(i) cure any deficiencies cited by any Governmental Entity or the JCAHO in the most recent surveys conducted by each or develop and timely implement a plan of correction that is acceptable to any Governmental Entity or the JCAHO;

(j) keep available for Buyer the services of the present officers, employees, medical staff, consultants, sales agents and representatives of the Facilities, Seller and System Entities;

(k) comply in all material respects with all Laws applicable to the conduct of the business and operation of the Purchased Assets, including taking all such actions as may be required so that the operation of the Purchased Assets will comply with HIPAA;

(l) continue to collect accounts receivable (including Assumed Physician Receivables) and pay accounts payable with respect to the Facilities and the Purchased Assets in the ordinary course of business;

(m) maintain all Permits relating to the Facilities, Purchased Assets and Assumed Liabilities in good standing; and

(n) promptly notify Buyer of any material and adverse change to the Purchased Assets.

**8.3 Negative Covenants.** From the date hereof to the Closing Date, except as set forth in Seller's Disclosure Schedule, Seller and the System Entities in respect of the Facilities and the Purchased Assets will not, without the prior written consent of Buyer, which will not be unreasonably withheld or delayed:

(a) (i) amend in any material respect or terminate any commitment, contract, lease or agreement, other than on commercially reasonable terms in the ordinary course of business, (ii) enter into any commitment, contract, lease or agreement (including collective bargaining agreements or any other commitment, contract, lease or agreement with unions or other bargaining groups), other than on commercially reasonable terms in the ordinary course of business, or (iii) incur or agree to incur any material liability other than in the ordinary course of business; provided that, without the prior written consent of Buyer, which will not be unreasonably withheld or delayed, Seller and the System Entities may not, even in the ordinary course of business, amend in any material respect, terminate or enter into any commitment, contract, lease or agreement that (A) is with a managed care entity or governmental payor or involves Health Midwest Comprehensive Care, Inc., (B) involves the payment or receipt of \$1,000,000 or more per year, (C) is not cancelable by Seller without penalty or cost upon not more than 180 days prior notice, (D) involves direct or indirect payments to or from physicians or other potential sources of referrals (or Persons owned or controlled, in whole or in part, by physicians or potential sources of referrals, including those in a position to influence referrals), (E) is an employment agreement, (F) will, upon assumption by Buyer, restrict the ability of Buyer to compete in any manner in any geographic area, or (G) is with a union or other bargaining group;



(b) except in the ordinary course of business in accordance with existing personnel policies; increase compensation payable or to become payable or make a bonus payment to or otherwise enter into one or more bonus agreements with any employee or agent, or amend or terminate the Retirement Reserve Plan; provided that consideration due to key employees at or prior to Closing may be authorized and paid by Seller in order to induce key employees to remain through the Closing (provided that such amounts will not be taken into consideration in determining Buyer's covenants to pay similar wages and will not be an Assumed Liability);

(c) sell, assign or otherwise transfer or dispose of any Purchased Assets, except in the ordinary course of business, or with respect to the Excluded Assets;

(d) conduct any discussions or negotiations regarding collective bargaining and union activities without consultation with Buyer prior to any such discussion or negotiation and, to the extent possible, Buyer's participation in any such discussion or negotiation;

(e) except Permitted Encumbrances, create, assume or permit to exist any new Encumbrance upon any of the Purchased Assets;

(f) except Permitted Capital Expenditures, make any capital expenditure commitment;

(g) (i) except in the ordinary course of business consistent with past practices, by action or inaction, abandon, terminate, cancel, forfeit, waive or release Seller's material rights, in whole or in part, with respect to the Purchased Assets; (ii) effect any corporate merger, business combination, reorganization or similar action or take any other action, corporate or otherwise, which could reasonably be expected to affect adversely Seller's ability to perform in accordance with this Agreement, (iii) cancel or permit the cancellation or lapse of insurance coverage on the Purchased Assets or the Facilities, other than cancellations or lapses in connection with initiation of new or replacement coverage permitted by Section 8.2(e), or (iv) settle any dispute or threatened dispute regarding the Purchased Assets in a manner that materially and adversely affects Buyer (it being understood that the maintenance of record retention programs with respect to the Purchased Assets shall be deemed not to materially and adversely affect Buyer); or

(h) take any other action outside the ordinary course of business except as otherwise permitted hereunder.

#### **8.4 Certain Notifications.**

(a) Within five days following the date of this Agreement, Seller and Buyer shall each file a premerger notification with the FTC and the Justice Department under the HSR Act, concerning the transaction set forth herein. From the date of such filing until the Closing Date, Seller and Buyer shall file all reports or other documents required or requested by the FTC or the Justice Department under the HSR Act or otherwise and will comply promptly with any requests by the FTC or the Justice Department for additional information concerning such transactions, so that the waiting period specified in the HSR Act will expire as soon as



reasonably possible after the execution and delivery of this Agreement. Buyer agrees to pay all application fees required in connection with any filing required under the HSR Act, and Buyer and Seller shall take all commercially reasonable actions necessary to insure that the waiting period imposed under the HSR Act terminates or expires as soon as reasonably possible after the execution and delivery of this Agreement. Seller and Buyer agree to use their commercially reasonable efforts to cooperate and to oppose any preliminary injunction sought by any Governmental Entity preventing the consummation of the transactions contemplated by this Agreement.

(b) Seller and Buyer shall furnish each other such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of necessary filings or submissions under the provisions of the HSR Act. Seller and Buyer will supply to each other copies of all correspondence, filings or communications, including file memoranda evidencing telephonic conferences, by such party or its Affiliates with any Governmental Entity or staff members thereof, with respect to the transactions contemplated by this Agreement and any related or contemplated transactions, except for (i) documents filed pursuant to Item 4(c) of the Hart-Scott-Rodino Notification and Report Form, (ii) communications regarding the same documents, (iii) information submitted in response to any request for additional information, or (iv) documents pursuant to the HSR Act which reveal Seller's or Buyer's negotiating objectives or strategies or purchase price expectations.

(c) Between the date of this Agreement and the Closing, each party shall promptly notify the other party in writing if it becomes aware of (i) any fact or condition that causes or constitutes a breach of any of such party's representations and warranties made as of the date of this Agreement, (ii) the occurrence after the date of this Agreement of any fact or condition that would or be reasonably likely to cause or constitute a breach of any such representation or warranty had that representation and warranty been made as of the time of the occurrence of, or such party's discovery of, such fact or condition, or (iii) the occurrence of any breach of any covenant of such party in this Section 8 or of the occurrence of any event that may make the satisfaction of the conditions in Section 9 or 10 impossible or unlikely.

#### **8.5 Permits and Approvals.**

(a) Buyer and Seller shall use commercially reasonable efforts to obtain (and will promptly prepare all registrations, filings and applications, requests and notices preliminary to) all Approvals, or any waiver of any of the foregoing, required to be obtained from, or any notice required to be filed with or delivered to, any Governmental Entity and all licenses, permits, franchises, certificates of authority, or orders required to be issued by any Governmental Entity in order to consummate the transactions contemplated by this Agreement and to operate the Facilities, including the merger contemplated by Section 10.1. Buyer acknowledges that the Approvals needed to operate the Facilities following Closing are Buyer's responsibility to seek and obtain. Seller will reasonably cooperate with Buyer's efforts in this regard, including providing information about the Facilities needed for the various applications and filings Buyer needs to make.

(b) Seller and Buyer shall use commercially reasonable efforts to obtain all Approvals, or any waiver of any of the foregoing, required to be obtained from, or any notice



required to be filed with or delivered to, any Governmental Entity or any other Person with respect to an Assumed Contract. In the event that any such Approval is not obtained, Seller shall reasonably cooperate with Buyer in an effort to obtain for Buyer the benefits of each such Assumed Contract. Seller shall take the lead in its discussions, if any, with the Missouri and Kansas Attorneys General, Kansas Commission of Insurance, and any other interested state officials relating to the transactions contemplated by this Agreement, and shall include Buyer in any such discussions. The parties shall prepare any document or other material which may be required by any Governmental Entity as a predicate to or result of the transactions contemplated herein.

**8.6 Additional Financial Information.** Within thirty (30) days following the end of each calendar month prior to the Closing Date, Seller will deliver to Buyer copies of the unaudited consolidated balance sheets and the related unaudited consolidated statements of income of, or relating to, Seller for each month ended after the Balance Sheet Date, together with a year-to-date compilation and the notes, if any, related thereto, which presentation shall be true, complete and correct in all material respects, shall have been prepared from and in accordance with GAAP and the books and records of Seller and the System Entities, applied on a consistent basis throughout the applicable periods (including consistency with the Balance Sheet and the Income Statement), and which shall fairly and accurately present the financial condition and results of operations of Seller and the System Entities as of the date and for the period indicated.

**8.7 Books and Records.** Until the later to occur of (a) the final adjudication of any dispute or investigation involving liabilities, federal, state or local taxes or under the Medicare or Medicaid programs arising out of the business, operations or affairs of the System before the Closing Date, or (b) the running of applicable statutes of limitations, Buyer will maintain in the ordinary course of business all books and records of Seller and the System Entities constituting a part of the Purchased Assets which are delivered to Buyer at Closing and which relate to the pre-Closing business, operations and affairs of the System to the extent reasonably necessary in connection with any tax, Medicare or Medicaid liability, professional or medical malpractice liability, or other matter reasonably relating to the System for any period ending at or before the Closing Date.

**8.8 Efforts to Close.** Seller and Buyer shall use their reasonable commercial efforts to satisfy all of the conditions precedent set forth in Articles 9 and 10 of this Agreement to the extent that such party's action or inaction can control or influence the satisfaction of such conditions, so that the Closing will occur on December 31, 2002. Notwithstanding the foregoing or anything else in this Agreement or elsewhere to the contrary, Buyer shall have no obligation whatsoever to make any commitments with respect to operation of the Facilities or Purchased Assets in addition to those set forth in Article 5 hereof, whether at the request of any Governmental Entity or otherwise, and Seller and the System Entities shall make no such commitments that could be binding on Buyer.

**8.9 Coordination with Payors.** Effective as of the Closing Date, Seller shall change the pay-to address for payments from any applicable government payors from which payments will be made to Buyer based on the assignment of any provider agreement with respect to the Facilities to an account subject to Buyer's sole control as designated by Buyer, consistent with the terms of the Change of Pay-To Address Instruction Letter reasonably approved by Buyer.



Prior to Closing, Seller shall submit for Buyer's review and approval a draft Change of Pay-To Address Instruction Letter with respect to such governmental payors. At Closing, Seller shall provide Buyer with a copy of such correspondence which Seller has sent to such governmental payors.

**8.10 Insurance Ratings.** Seller will take all action reasonably requested by Buyer to enable Buyer to succeed to the workers compensation and unemployment insurance ratings, and other ratings for insurance or other purposes established by Seller and the System Entities for the Facilities.

**8.11 Governmental Investigations.** On and after the date hereof, Seller shall provide Buyer with reasonably periodic updates regarding the status of investigations, if any, by any Governmental Entity of Seller or any System Entity and, subject to agreement of the applicable Governmental Entity, permit Buyer to participate in any meetings held with Governmental Entities related hereto.

**8.12 Tax Deferred Exchange.** It is the intent of the parties that Buyer be able to achieve tax deferred exchange treatment pursuant to Section 1031 of the Code for the transactions contemplated hereby and one or more other transactions. Therefore, Seller shall take any and all actions that may be reasonably requested by Buyer to achieve such treatment, including entering into an Agreement of Exchange; provided, however, Seller shall incur no liabilities, expenses, or costs as a result of the exchange transaction and Seller makes no representation or warranty regarding the tax consequences of the exchange transaction. Buyer shall defend, indemnify, and hold Seller harmless from any and all cost, loss, liability, damage and expense (including reasonable attorneys' fees) arising from entry into and performance of the Agreement of Exchange.

**8.13 Prompt Response.** Whenever a provision of this Article Eight requires Seller to consult with Buyer or to obtain Buyer's consent prior to taking or refraining to take any particular action, Buyer shall respond promptly to any written request made pursuant to this Agreement to either Sam Hazen or Gregg Gerken and shall advise Seller within five (5) business days whether Buyer will consent to the taking or refraining to take any particular action.

**8.14 Failure to Consummate Merger.** If the merger contemplated by Section 10.1 is not consummated and the condition to Closing set forth in Section 10.1 is deemed waived, then (i) Seller shall cause all the System Entities to be jointly and severally liable with Seller with respect to all obligations of Seller under this Agreement, (ii) at the Closing, each System Entity shall sell, convey, transfer and deliver to Buyer all Purchased Assets owned, leased or controlled by such Seller Entity, as and to the extent that Seller would have sold, transferred and conveyed such Purchased Assets to Buyer, and (iii) Seller shall defend, indemnify, and hold Buyer harmless from any and all cost, loss, liability, damage and expense (including reasonable attorneys' fees) arising from the failure of such merger to be consummated.

**8.15 Home Health and Mental Health Services Operations.** Seller has the option, until the close of business on the 30<sup>th</sup> day after the date hereof, to elect to treat the Home Health and Mental Health Services Operations as Retained Facilities and Operations by delivering to Buyer a written notice to such effect, which election shall be irrevocable, and upon delivery of



such notice the Home Health and Mental Health Services Operations shall be deemed to be Retained Facilities and Operations. In the event that Seller exercises such option, the Non-Transferred Asset Value for the Home Health and Mental Health Services Operations shall be deemed to be \$20,500,000.

**8.16 TIF Redevelopment Agreement and Plan.** Seller shall use its commercially reasonable efforts to obtain any Approvals required to transfer to Buyer or one or more of its Affiliates as determined by Buyer all rights and benefits of Seller and its Affiliates under the Redevelopment Agreement and Plan.

**8.17 Certain Matters with Respect to HMCC.**

(a) Between the date hereof and the Closing Date, Buyer and Seller will review the operations of Health Midwest Comprehensive Care, and Seller will use its commercially reasonable efforts to implement any changes in governance, structure and operation that Seller determines, in consultation with Buyer, are necessary or appropriate.

(b) Seller shall use its commercially reasonable efforts to collect, on behalf of Health Midwest Comprehensive Care, all PHO Receivables prior to the Closing Date. From and after the Closing, Buyer will use its commercially reasonable efforts to collect, on behalf of Health Midwest Comprehensive Care, all PHO Receivables. In the event that any PHO Receivables are not fully collected within 90 days of the Closing Date, Seller shall purchase such PHO Receivables for their face amount. Buyer shall be entitled to enforce the foregoing on behalf of Health Midwest Comprehensive Care, its successors and assigns.

**8.18 Certain Environmental Matters.** Seller or the applicable System Entity will:

(a) with respect to the Research Medical Center facility, prepare and implement a Spill Prevention, Containment and Countermeasure (SPCC) Plan applicable to the facility in compliance with all applicable Environmental Laws, including Part 112 of Title 40 of the Federal Code of Regulations and any comparable state or local laws, subject to Buyer's approval;

(b) with respect to Lee's Summit Hospital facility, (i) prepare and implement a Spill Prevention, Containment and Countermeasure (SPCC) Plan applicable to the facility in compliance with all applicable Environmental Laws, including Part 112 of Title 40 of the Federal Code of Regulations and any comparable state or local laws, subject to Buyer's approval; and (ii) submit a formal investigation report to the Missouri Department of Natural Resources with respect to an underground storage tank located on or near the Lee's Summit Hospital campus, and obtain a closure determination from that agency with respect to such underground storage tank pursuant to applicable Environmental Laws;

(c) enter into Missouri's Voluntary Cleanup Program (VCP) for purposes of addressing the issues identified at the Nick's Auto Sales parcel; and

(d) enter into Missouri's Voluntary Cleanup Program (VCP) for purposes of addressing the issues identified at the Old Fish Market parcel.



**8.19 Retirement Reserve Plan.** Seller has the option, until the close of business on the 30<sup>th</sup> day after the date hereof, to elect to retain the Retirement Reserve Plan by delivering to Buyer a written notice to such effect, which election shall be irrevocable, and upon delivery of such notice the Retirement Reserve Plan shall be deemed retained by Seller. In the event that Seller exercises such option, (a) the funds set aside in trust to fund obligations arising under the Retirement Reserve Plan will not be Purchased Assets under Section 2.1(x), (b) the Retirement Reserve Plan responsibilities will not be Assumed Liabilities under Section 2.3(c), (c) the Purchase Price will not be adjusted pursuant to Section 2.6(v), (d) the Retirement Reserve Plan will be a "Retained Plan" as defined in the Employee Benefit Plan Supplement and (e) neither Buyer nor Seller shall have any obligations under Section 3 of the Employee Benefit Plan Supplement. The parties will enter into any documentation and take such further actions as are necessary to implement the transactions contemplated by this Section 8.20.

**8.20 Wetzel Clinic Severance/Retirement Benefit Account Obligations.** Buyer has the option, until the close of business on the 30<sup>th</sup> day after the date hereof, to elect to treat the Wetzel Clinic Severance/Retirement Benefit Account Obligations as Assumed Liabilities by delivering to Seller a written notice to such effect, which election shall be irrevocable, and upon delivery of such notice (i) the Purchase Price shall be reduced as set forth in Section 2.6(xiii) and (ii) notwithstanding anything herein to the contrary, the Wetzel Clinic Severance/Retirement Benefit Account Obligations shall be deemed to be Assumed Liabilities.

**8.21 Notice of Accounts and Notes.** At least fifteen (15) business days prior to the Closing Date, Seller shall provide to Buyer a written list of any accounts and notes receivable from physicians and other sources of referrals (or Persons owned or controlled, in whole or in part, by physicians or potential sources of referrals, including those in a position to influence referrals) to Seller or any System Entity that are more than 30 days past due as of the date of such written list (including any accounts and notes receivables that have been written off), which list shall include reasonable detail on such accounts and notes and the obligors thereunder sufficient to permit Buyer to determine whether to treat such accounts and notes as Excluded Physician Receivables.

## 9. CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER.

The obligations of Buyer hereunder are, at the option of Buyer, subject to the satisfaction, on or prior to the Closing Date, of the following conditions unless waived in writing by Buyer:

**9.1 Compliance with Covenants.** Seller and each System Entity shall have in all material respects performed all obligations and complied with all covenants and conditions required by this Agreement to be performed or complied with by it at or prior to the Closing Date; provided that, except for Seller's obligation to convey the Purchased Assets at Closing, this condition will be deemed to be satisfied unless (i) Seller and/or any System Entity was given written notice of such failure to perform or comply and did not or could not cure such failure to perform or comply within thirty (30) days after receipt of such notice and (ii) the respects in which such covenants and obligations have not been performed have had or would reasonably be expected to have a Material Adverse Effect.



**9.2 Opinion of Seller's Counsel.** Buyer shall have received from counsel to Seller an opinion dated as of the Closing Date and addressed to Buyer, in form and substance reasonably satisfactory to Buyer, to the effect that: (i) Seller is a corporation duly organized and validly existing in good standing under the laws of the State of Missouri; (ii) Seller has full power and authority to make, execute, deliver and perform this Agreement, and all corporate proceedings required to be taken by Seller to authorize the execution, delivery and performance of this Agreement, and to sell, convey, assign, transfer and deliver the Purchased Assets as herein contemplated have all been duly and properly taken; and (iii) this Agreement constitutes the valid and binding obligation of Seller, enforceable in accordance with its terms. Such opinion shall contain usual and customary qualifications and assumptions. In rendering such opinion, such counsel may rely upon certificates of governmental officials and may place reasonable reliance upon certificates of officers of Seller.

**9.3 Pre-Closing Confirmations.** Buyer shall have obtained documentation or other evidence reasonably satisfactory to Buyer that Buyer has;

(a) received all Permits and Approvals from all Governmental Entities whose approval is required to consummate the transactions herein contemplated and continue the operation of the Facilities by Buyer from and after the Closing on the same terms as they were operated prior to the Closing (including being eligible to receive payment, subject only to restrictions applicable to any participating provider, under the Medicare and Medicaid programs and under valid provider agreements as a "provider"), except for any such Approvals the failure to obtain would not reasonably be expected to have a Material Adverse Effect (it being understood that the inability to continue the operations of the Core Facilities and Operations by Buyer after the Closing on the same terms as they were operated prior to the Closing (including being eligible to receive payment under the Medicare and Medicaid programs and under valid provider agreements as a "provider") would reasonably be expected to have a Material Adverse Effect); and

(b) complied with all waiting periods under the HSR Act.

**9.4 Action/Proceeding.** No court or any other Governmental Entity shall have issued an order restraining or prohibiting the transactions herein contemplated; and no Governmental Entity shall have commenced or threatened in writing to commence any action or suit before any court of competent jurisdiction or other Governmental Entity that seeks to restrain or prohibit the consummation of the transactions contemplated or otherwise seeks a remedy which would materially and adversely affect the ability of Buyer to enjoy the full use and enjoyment of the Purchased Assets; and neither the Justice Department nor the FTC nor any state Attorney General shall have requested, orally or in writing, that Buyer delay or postpone the Closing (it being understood that the parties will continue to be obligated to comply with their commitments under Section 8.8 unless and until the Closing occurs or this Agreement is terminated).

**9.5 Instruments of Transfer.** Seller shall have furnished to Buyer, in form reasonably acceptable to Buyer, deeds, bills of sale, assignments or other instruments of transfer necessary or appropriate to transfer to and effectively vest in Buyer all of Seller's right, title and interest in and to the Purchased Assets, in proper statutory form for recording if such recording is necessary



or appropriate.

**9.6 Title Policies and Surveys.** Buyer shall have received commitments from a title insurance company reasonably acceptable to Buyer to issue as of the Closing Date an ALTA 1992 form owner's policy of title insurance with extended coverage and zoning endorsements and other endorsements reasonably acceptable to Buyer for the Real Property associated with the Core Facilities and Operations (which shall include leasehold policies with respect to those portions of such Real Property leased by Seller Entities), together with improvements, buildings and fixtures thereon, in amounts equal to the reasonable value assigned to such Real Property by Buyer and in the customary form prescribed for use in the States of Missouri and Kansas, respectively, but with any creditors' rights exception and any mandatory arbitration provision deleted therefrom. Seller agrees to provide such information as Buyer's title insurance company may reasonably require in order to delete the creditors' rights exception. The commitments shall provide for the issuance of such policy (or policies) to Buyer as of Closing and shall insure fee simple title to that portion of such Real Property owned by Seller or any System Entity and leasehold title to that portion of such Real Property leased by Seller or any System Entity subject only to (i) the lien of taxes for the year 2002, not yet due and payable, and (ii) Permitted Encumbrances. Buyer shall, within ten (10) business days from the date Buyer receives written notice of the title insurer's declination to provide the requested insurance, notify Seller in writing of any title exceptions or defects pertaining to such Real Property which would result in the inability of Buyer to receive title policies sufficient to satisfy this Section 9.6. Not less than ten (10) business days after receiving Buyer's notice, Seller shall notify Buyer in writing of any such exceptions to title or defects in title which Seller is unable or unwilling to cause to be removed or insured against prior to or at Closing. With respect to such exceptions or defects, Buyer shall elect, by giving written notice to Seller within ten (10) days thereafter, whether to (x) terminate this Agreement, (y) consummate the Closing with respect to all Purchased Assets and Assumed Liabilities without waiving any rights to indemnification with respect to such exceptions and defects, or (z) consummate the Closing with respect to all Purchased Assets and Assumed Liabilities other than such Real Property (as used in this Section 9.6, "such Real Property" refers to those parcels or tracts of Real Property for which there are exceptions or defects in the title which Seller is unwilling to cause to be removed or insured against prior to such Closing), with a reduction in the Purchase Price to reflect the fact that such Real Property will not be transferred to Buyer. Seller agrees to deliver any information (including any affidavits or other documents) as may be required by Buyer's title insurance company under the requirements section of the title insurance commitment or otherwise in connection with the issuance of Buyer's title insurance policy. Seller also agrees to provide an affidavit of title and/or such other information as Buyer's title insurance company may reasonably require in order for the title insurance company to insure over the "gap" (i.e., the period of time between the effective date of the title insurance company's last checkdown of title to such Real Property and the Closing Date) and to use commercially reasonable efforts to cause the title insurance company to delete all standard exceptions from the final title insurance policy. Buyer shall also have received as-built surveys of the Real Property reflecting all improvements visible on the grounds and all easements and rights of way of record or on the grounds and no encroachments that adversely affect title to the Real Property or would interfere with or would reasonably be expected to interfere with the operations of the Purchased Assets in a manner consistent with the current use by Seller or the System Entities. Such surveys shall meet the requirements of an ALTA/ASCM Survey and



otherwise be reasonably acceptable to Buyer. The survey shall be certified to Buyer and to the title insurance company. The costs of such title policy and surveys shall be borne one-half by Buyer and one-half by Seller. It is the intent of the parties that Buyer take the lead role in satisfying this condition, with the cooperation and assistance of Seller.

**9.7 Limitations.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, BUYER AGREES THAT (I) BUYER SHALL NOT BE EXCUSED FROM CONSUMMATING THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT BASED ON THE FAILURE OR ALLEGED FAILURE OF ANY REPRESENTATION OR WARRANTY TO BE TRUE, (II) BUYER WILL NOT ASSERT THE FAILURE OR ALLEGED FAILURE OF ANY REPRESENTATION OR WARRANTY TO BE TRUE AS A BASIS FOR NOT CONSUMMATING THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND (III) THE SOLE REMEDY FOR ANY FAILURE OF A REPRESENTATION AND WARRANTY TO BE TRUE IS THE INDEMNIFICATION PROVIDED IN SECTION 13.1. IN NO EVENT SHALL ANY DISPUTE OVER ANY INDEMNIFICATION DELAY OR POSTPONE THE CLOSING. MOREOVER, THE FAILURE OF ONE OR MORE CONDITIONS IN THIS ARTICLE 9 TO BE SATISFIED WITH RESPECT TO ANY ONE OR MORE FACILITIES (OTHER THAN THE CORE FACILITIES AND OPERATIONS, WHICH ARE REQUIRED FOR CLOSING), INCLUDING EXPIRATION OF THE WAITING PERIOD UNDER THE HSR ACT, SHALL NOT RELIEVE BUYER OF ITS OBLIGATIONS HEREUNDER WITH RESPECT TO THE OTHER FACILITIES TO THE EXTENT ALL OTHER CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS HEREUNDER WITH RESPECT TO SUCH OTHER FACILITIES HAVE BEEN SATISFIED.

**9.8 Multiple Closings.**

(a) **Core Facilities Closing.** In the event all conditions precedent to the obligations of Buyer contained in this Article 9 with respect to the Core Facilities and Operations have been satisfied, Buyer shall be obligated to consummate the purchase of the Core Facilities and Operations at a Closing in accordance with and subject to Article 4 of this Agreement, without regard to whether all conditions precedent with respect to Purchased Assets and/or Facilities not constituting Core Facilities and Operations are at such time satisfied or waived. Buyer shall not be obligated to consummate any Closing unless the Core Facilities and Operations have been or are simultaneously purchased by Buyer; provided that if the conditions to the obligations of Buyer to purchase any medical office building associated with, on or contiguous to the campus of any Hospital that is a Core Facility and Operation have not been satisfied, this condition with respect to such medical office building will be deemed satisfied if Seller enters into leasing or subleasing arrangements with Buyer at the Closing that provide Buyer substantially all the benefits with respect to such medical office building, which lease or sublease is in form and substance reasonably acceptable to Buyer.

(b) **Subsequent Material Facilities Closings.**

(i) **Second Closing.** Subject to the prior consummation of the purchase by Buyer of the Core Facilities and Operations at the Closing contemplated by Section 9.8(a) of this Agreement and subject also to Section 9.8(c) below, Buyer shall be obligated to consummate the